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DEVELOPMENT AGREEMENT

BETWEEN

THE CITY OF NEWPORT

AND

FLETCHER JONES MOTOR CARS, INC.

(DEVELOPMENT AGREEMENT NO. 9)

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## DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT ("the Agreement") is made and entered into as of the 4TH day of JANUARY, 1996, by and between the CITY OF NEWPORT BEACH ("City") and Fletcher Jones Motor Cars, Inc. ("Developer").

### I.

#### RECITALS

##### Section 1.01: City Authority

City is a municipal corporation and charter city. City is authorized to enter into this Agreement pursuant to authority of California Government Code § 65864 et seq. and Chapter 15.45 of the Newport Beach Municipal Code.

##### Section 1.02: Developer Authority

Developer is a corporation duly authorized to conduct business in the State of California.

##### Section 1.03: Purpose of Agreement

Developer currently owns and operates an Automobile Dealership on real property located at 1301 Quail Street in the City of Newport Beach. The Chief Executive Officer of Developer has operated Automobile Dealerships for 25 years. Developer has operated the Mercedes Benz Automobile Dealership for the past 3 1/2 years. Developer's operation has been successful but Developer

does not own the property and the current location does not afford Developer any significant frontage on a major arterial highway. Developer has considered relocating the dealership to another city but would prefer to remain in the City of Newport Beach. Developer currently generates significant sales tax revenues for the City of Newport Beach and those revenues would be lost in the event of a relocation of the dealership to another jurisdiction and City services would suffer as a consequence.

#### Section 1.04 Attention of Dealership

City, in reliance on the special skill and ability of Developer to operate a successful Automobile Dealership and Developer's affiliation with Mercedes Benz, has undertaken efforts to retain Developer's Automobile Dealership in the City and desires to enter into this Agreement so that Developer will continue to operate the Automobile Dealership within the City.

#### Section 1.05: Development Site

City has entered into an agreement with the Irvine Company ("TIC") pursuant to which City has the right to acquire a parcel consisting of approximately 5.59 acres of vacant land commonly known as San Diego Creek North and legally described in Exhibit A (Parcel A). City is currently negotiating with Cal Trans to acquire their interest in a 1.10 acre parcel of vacant land contiguous to, and immediately east of Parcel A and legally described in Exhibit B (Parcel B). City is also negotiating with

the Transportation Corridor Agency to acquire a 2.64 acre parcel of vacant land contiguous to, and immediately west of, Parcel A and which is legally described in Exhibit C (Parcel C). The parcels of land described in Exhibits A, B and C are collectively referred to as the Development Site.

Section 1.06: Adequacy of Development Site

City and Developer have determined that the Development Site is of sufficient size to accommodate an Automobile Dealership larger than Developer's current operation and provides increased visibility and access due to the proximity of the site to major arterials and the San Joaquin Hills Transportation Corridor.

Section 1.07: Development Site/Special Considerations

Developer and City acknowledge that the Development Site, while advantageous from the standpoint of size, visibility and access, is difficult and expensive to develop due to the topography, the presence of major public utilities (such as water and electrical facilities), the proximity of the property to wetlands, the need to acquire Parcel B and Parcel C which are each owned by public entities, and the cost of public improvements necessary to achieve physical access to the Development Site. Permits and approvals are, or may be, required from numerous public entities and the current owners of the three Parcels as a pre-condition to construction of an Automobile Dealership on the Development Site.

Section 1.08: Acknowledgments

City and Developer acknowledge that construction of an Automobile Dealership on the Development Site will require each Party to devote a substantial amount of time, effort and money to secure each of the Parcels and all entitlements. Many of these expenditures will occur prior to the actual transfer of the Development Site from the City to Developer and prior to the realization of the financial benefits each Party can expect once the dealership is constructed. Developer acknowledges that City is required, prior to dedication of Parcel A by TIC, to commit to the construction of a major storm drain system and modifications to a Development Agreement between the City and TIC. City acknowledges that Developer, prior to receipt of the Development Site, has committed to continue operations in the City of Newport Beach rather than relocate to another jurisdiction and is committing to incur site development costs substantially above those normally associated with the construction of an Automobile Dealership.

Section 1.09: Basic Consideration

The primary consideration to the City for this Agreement is retention of an Automobile Dealership that is the single largest sales tax generator in Newport Beach. The primary consideration to Developer for this Agreement is the right to construct an Automobile Dealership on property owned by Developer and which will be visible and accessible to a large volume of potential customers and in close proximity to the majority of Developer's current

customers.

Section 1.10: Consistency

This Agreement is consistent with the various elements of the Newport Beach General Plan (as amended by GPA 95-1(d) ) and all other applicable ordinances, plans, resolutions, and policies of the City. This Agreement is also consistent with the purpose and intent of state and local laws authorizing development agreements in that it represents comprehensive planning, provides certainty in the approval of subsequent construction, subject to compliance with the conditions, reduces the economic cost of development by providing assurance to Developer that it may use and develop the property in accordance with the discretionary project approvals and this Agreement, and provides assurance the City will retain vitally important sales tax revenue.

Section 1.11 Police Power

The City Council has determined that this Agreement is in the best interest of the health, safety, and general welfare of the City, its residents, and the public; was entered into pursuant to, and represents the valid exercise of, the City's police power; and has been approved in compliance with the provisions of state and local law that establish procedures for the approval of development agreements.

Section 1.12 City Ordinance/Adoption

On September 11, 1995, the City Council adopted Ordinance No. 95-43, approving this Agreement and authorizing the City to enter into this Agreement.

II.

DEFINITIONS AND RULES OF INTERPRETATION

Section 2.01: Definition of Words and Terms

In addition to any words and terms defined elsewhere in this Agreement, the following definitions shall apply to the words and terms used in this Agreement.

A. "Automobile Dealership" shall mean the automobile sales and service facility to be constructed and operated on the Development Site.

B. "CIOSA" shall mean the Circulation Improvement and Open Space Agreement between the City of Newport Beach and The Irvine Company dated June 30, 1993.

C. "City" shall mean the City of Newport Beach.

D. "City permit" shall mean any permit, license or approval to be granted by the City of Newport Beach, including amendments to CIOSA, amendments to the Planned Community Development Text for San Diego Creek North, zoning changes for Parcels A, B, and C, amendments to the Land Use Element of the General Plan redesignating Parcels A, B and C, approval of an environmental document, amendments to the Land Use Plan of the local coastal



program, approval of grading permits, approval of building permits, approval of water and sewer connection permits, and other permits which the City is empowered to approve and are necessary for construction of the Project.

E. "Dedication Agreement" shall mean the agreement between the City and TIC pursuant to which the City acquires title to Parcel A.

F. "Developer" shall mean Fletcher Jones Motor Cars, Inc.

G. "Development Agreement Ordinance" shall mean Chapter 15.45 of the Newport Beach Municipal Code.

H. "Declaration" shall mean the Declaration of Special Land Use Restrictions and Right of First Refusal between City and TIC, and pursuant to which, use restrictions consistent with this Agreement shall be placed on the Development Site.

I. "Development Site" shall mean Parcels A, B and C (as described in Exhibits A, B and C).

J. "Discretionary project approval" shall mean all permits, approvals, licenses or authorizations, including non-City permits and certain City permits, which involve the exercise of discretion and are necessary to implement the project. The project's specific approvals do not include building and grading permits issued by City.

K. "Force Majeure" shall mean delays due to war; insurrection; strikes; lock-outs; riots; floods; public enemy; epidemics; quarantine; restrictions; freight and embargoes; lack of transportation; governmental restrictions or priority; litigation;

unusually severe weather; inability to secure necessary labor, materials or tools, delays of any contract work by subcontractor supplier; acts of another Party; acts, or the failure to act, of any public or governmental agency or entity; or any other causes beyond the control, or without the fault of, the Party claiming an extension of time to perform. An extension of time for any cause shall only be for the period of the forced delay and shall commence to run from the time of the commencement of the cause.

L. "Future general regulations" means those general regulations adopted by the City after the effective date of this Agreement.

M. "General regulations" means those ordinances, resolutions, policies, plans and guidelines of the City which are generally applicable to the use of land and/or construction within the City and include General Plan, zoning ordinance, water and sewer ordinances, building ordinances, traffic impact fee ordinances, building excise tax ordinances, and similar ordinances, resolutions, policies and plans.

N. "Grant deed" means an instrument in the form approved by the parties.

O. "Hazardous materials" means any flammable explosives, radioactive materials, hazardous waste, toxic substances or related materials, and shall include but not be limited to, substance defined as "hazardous substance," "hazardous materials," or toxic substances in the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 and subsequently

amended (circa), the Hazardous Materials Transportation Act, the Resource Conservation Recovery Act (RCRA), substances defined as "hazardous waste" in Section 25117 of the California Health and Safety Code; "hazardous substances" as defined in Section 25316 of the California Health and Safety Code; and those substances defined as "hazardous waste" in regulations adopted, and publications promulgated, pursuant to any of the foregoing.

P. "Jamboree flyover" means the proposed transition ramp from northbound Jamboree Road to the northbound lanes of State Route 73, which may be constructed over a portion of Parcel C, and designated on TCA plans and specifications as JR-5 ramp.

Q. "Non-City permit" shall mean any permit, approval, license or authorization to be granted by an entity other than the City of Newport Beach and which is necessary for the construction of the project.

R. "Parcel A" shall mean the real property described in Exhibit A.

S. "Parcel B" shall mean the real property described in Exhibit B.

T. "Parcel C" shall mean the real property described in Exhibit C.

U. "Permitted exceptions" shall mean those exceptions to title specified on the title policy obtained by City and which Developer has either not disapproved or disapproved and the City has cured.

V. "Project" means all actions that are a prerequisite to

construction of an Automobile Dealership on the Development Site including City acquisition of Parcel A from TIC, City acquisition of Parcel B from Cal Trans, City acquisition of Parcel C from the TCA, the approval of all City permits and non-City permits and the construction and operation of an Automobile Dealership on the Development Site in accordance with the terms and conditions of this Agreement and as specified in the Conceptual Site Plan (Exhibit E) subject only to modifications approved by the City.

W. "TCA" shall mean the Transportation Corridor Agency.

X. "TIC" shall mean The Irvine Company.

#### Section 2.02: Rules of Interpretation

A. Words of the masculine gender shall be deemed and construed as correlative words of a feminine and neuter genders.

B. Unless the context shall otherwise indicate, words importing the singular shall include the plural and vice versa. Words importing person shall include firms, associations, corporations, including private or public entities, as well as natural persons.

C. Whenever this Agreement requires either Party to make any payment or perform, or refrain from performing, any act or obligation, each such provision shall be construed as an express covenant to make the payment, to perform, or not to perform, as the case may be, the act or obligation. The table of contents and article and section headings of this Agreement are not treated as part of the Agreement and do not effect the meaning, terms or

conditions of this Agreement.

D. The terms "includes" and "including" and all context and forms of those words shall be deemed to also state "but not limited to."

E. "Assignment" and "assignee" shall include all context of hypothecation, sales, conveyances, and transfers.

F. The term Mortgage refers to the holder of a beneficial interest under any mortgage, deed of trust, sale leaseback, or other similar security interest.

### III.

#### REPRESENTATIONS AND WARRANTIES

##### Section 3.01: Representations by City

City makes the following representations and warranties to Developer:

A. City is a municipal corporation and charter city duly organized and existing under and by virtue of the Constitution and laws of the State of California. By proper action of the City Council of the City of Newport Beach, the Mayor of the City has been duly authorized to execute this Agreement and the City is authorized to perform all of its obligations pursuant to this Agreement. This Agreement is enforceable at law and in equity against the City in accordance with its terms unless enforcement is barred by bankruptcy proceedings or other laws affecting creditors rights generally. City represents and warrants to Developer that

it has the lawful power and authority to enter into the transactions, and carry out the obligations contemplated by this Agreement.

B. The execution and performance of this Agreement by the City will not conflict with, or result in any breach of, the terms, conditions or provisions of any agreement or instrument to which the City is a Party or by which the City is bound.

C. City has determined that the Project will further the public good and is consistent with all City ordinances, plans and policies, except to the extent this Agreement contemplates an amendment to any ordinance, resolution, plan or policy.

D. The City permits and the non-City permits are, to the City's knowledge, all of the permits, licenses and approvals necessary to implement the Project and permit the construction and operation of an Automobile Dealership on the Development Site.

#### Section 3.02: Representations by Developer

Developer makes the following representations and warranties to City:

A. Developer is a corporation duly organized and existing under and by virtue of the laws of the State of California, and is authorized and qualified to do business in the State of California.

B. Developer has the lawful power and authority to enter into, and perform the obligations required by this Agreement. By appropriate corporate action, Developer has duly authorized and ratified this Agreement. Fletcher Jones, Jr. has been authorized

to execute this Agreement on behalf of the corporation. This Agreement is enforceable at law and in equity against Developer in accordance with its terms unless enforcement is barred by bankruptcy proceedings or other laws affecting creditors rights generally.

C. The execution and performance of this Agreement by Developer will not conflict with, or result in a breach of any of the terms, conditions or provisions of, any other agreement, instrument or document to which Developer is a Party or by which Developer is bound.

#### IV.

#### CITY COMMITMENTS

##### Section 4.01: Pre-Transfer Commitments

A. City shall acquire Parcel A from TIC upon satisfaction of conditions to closing and in accordance with the terms and conditions specified in the Dedication Agreement. City shall acquire Parcel A no later than January 1, 1996. City agrees to perform all of its obligations under the Dedication Agreement. Any material breach of the Dedication Agreement by the City shall be considered a material breach of this Agreement by City and, in the event of such a breach, Developer shall have the rights and remedies specified in Section 8.04. Parcel A shall be acquired by the City subject to the limitations and restrictions specified in the Dedication Agreement and the Declaration, including limitations on the use of Parcel A, (and Parcels B and C after acquisition by

the City) including limitations of the use of the Parcels, restrictions on the right to convert the Automobile Dealership to another use, and the right of architectural review and approval of conceptual and design Development Site plans and improvement plans.

B. City shall use its best efforts to obtain title to Parcel B from Cal Trans. City shall obtain a firm commitment to transfer Parcel B from Cal Trans on or before January 1, 1996. Parcel B shall be acquired by the City free and clear of any liens or encumbrances which would interfere or impede development of the Project. City's obligation to acquire Parcel B is contingent upon payment by Developer of all costs and expenses associated with the acquisition of the property and Developer's obligation to pay such costs and expenses is contingent upon Developer's prior approval of such costs and expenses.

C. City shall waive all planning, building, water, sewer and other processing fees City normally collects, on behalf of the City, from an applicant for any permit or entitlement to develop property which are deposited into the General Fund or specified City account, and which represent fees which City is authorized to waive. The parties agree the City does not have the power to waive, and is not required to waive, fees such as TCA fees and school impact fees which are collected by the City on behalf of other agencies.

D. City shall acquire Parcel C, or sufficient interest in Parcel C to allow Developer reasonable use of the Parcel for Automobile Dealership purposes on or before January 1, 1996. City



shall acquire Parcel C at no cost to Developer. City shall lease Parcel C to Developer for \$1.00 per year subject to public utilities easements which do not impede or interfere with development of the Project and subject to an easement for street and highway purposes retained by the TCA for the benefit of Caltrans which is necessary to accommodate the possible construction of the Jamboree flyover. In the event the TCA or its successor determines that all or a portion of Parcel C is no longer needed for street or highway purposes and City acquires a fee interest in all or portion of Parcel C, City shall, when legally possible to do so, transfer fee title of that portion of Parcel C owned in fee to Developer for \$1.00. The easement retained by the TCA for the benefit of Caltrans shall provide that the bridge structure soffit profile of the Jamboree flyover between Bayview Way and Bristol Street will maintain a minimum eighteen (18) foot clearance above grade at the center line of Bayview and the soffit profile will also guarantee a minimum twenty (20) foot clearance above the easterly "top of curb elevation" on Jamboree Road from the northerly curb line of Bayview Way through and including the south curb line of South Bristol Street. The approximate soffit profile shall be provided to Developer on or before November 1, 1995, to enable Developer's architects and designer to prepare a grading plan which will maximize the view of the Automobile Dealership from Jamboree Road.

E. City shall cooperate with Developer, and use its best efforts, to obtain all required non-City permits. City shall

initiate, and/or promptly process, all applications for City permits, including General Plan amendments, zoning amendments, and amendments to the Land Use Plan of the Local Coastal Program, that are necessary or required to implement the Project. City agrees to approve all City permits subject to its obligation to conduct public hearings to comply with applicable law, the presentation of substantial evidence in support of all required findings or decisions necessary to approve the permit, and subject to the requirement that the application and related documents fully comply with all applicable state and local laws, rules, plans and policies except to the extent that amendments to current plans are required to implement the Project. City shall prepare staff reports, public notices and other documents relevant to City permits in a timely manner at no cost to Developer.

F. City shall prepare and process an Environmental Impact Report (EIR) evaluating the potential impacts of implementation of the Project. City shall retain a Project Manager to expedite preparation of the EIR, interface with the EIR consultant and keep Developer informed as to the status and progress of the EIR. City shall pay all costs of the EIR related to the analysis of the environmental impacts of constructing off-site improvements.

G. City shall notify Developer of the preparation of all documents prepared by the City or its consultants relative to bids, cost estimates and scopes of work. City shall provide Developer with copies of all such documents, will allow Developer to review and comment on the documents prior to distribution and will

cooperate with Developer to minimize the costs incurred in performing the tasks identified in Exhibit D and other matters related to implementation of the Project. The City permits and non-City permits for which documents, reports or studies are, or may be, required and the City's pro-rata share of the estimated costs of preparing these documents, reports or studies are identified in Exhibit D. City shall pay fifty percent (50%) of any cost or expense in excess of those estimated for the documents, reports or studies identified in Exhibit D.

H. City shall construct an extension of Bayview Way from the east curb line of Jamboree Road to a point approximately 600 feet easterly of Jamboree Road. City has estimated the cost of constructing the Bayview Way extension to be approximately \$400,000. City shall fund the construction of the Bayview Way extension with the cost of construction reimbursed by Developer through the assessments paid pursuant to Section 5.03(c) and Developer shall have no other liability with respect to the construction of the Bayview Way extension.

I. City shall secure from TIC for the Developer upon the execution of this agreement a right of entry to Parcel A for purposes of conducting test, examinations or studies for the purposes of determining the suitability of Parcel A for development, to devise an appropriate plan for the grading of the site and to determine the size and design of proposed structures or improvements. The right of entry to Parcel A shall require Developer to defend, indemnify and hold TIC harmless with respect

to any claim, loss or damage arising from, or any way related to, the right of entry.

J. City shall retain geotechnical consultants and other experts as necessary to perform soils, geologic, engineering, and other tests necessary to determine if the soil, geologic and other conditions of the Development Site are suitable for the construction of the Project. The test results shall be submitted to Developer within five days after receipt by the City. The Development Site shall be considered suitable for construction of all necessary improvements unless the Developer notifies the City, in writing, within thirty days after receipt of the test results, the Development Site is not physically suited to the implementation of the Project.

#### Section 4.02: Commitment to Transfer

City shall convey to Developer all of its right, title and interest in Parcels A and B, and grant Developer a long term leasehold interest to the surface area represented by Parcel C within thirty (30) days after satisfaction of the following conditions, one or more of which may be waived by Developer:

A. City has acquired fee simple title to Parcels A, B and C, or such interest in each Parcel that will allow Developer to fully implement the Project subject only to permitted exceptions and provided that Developer is able to acquire title insurance for the Development Site.

B. All Discretionary Project approvals have been granted, subject only to conditions and requirements approved by Developer and the appeal period with respect to each permit has expired and no appeal has been filed.

C. Soils, engineering and related reports have been approved by City and Developer or City and Developer have failed to object to the reports within the period specified in this Agreement.

D. Developer has complied with all of its pre-transfer obligations, obtained financing for the Project, and Developer's representations and warranties remain true and correct as of the date of conveyance.

E. City shall convey Parcels A and B, and grant Developer a lease hold interest in Parcel C, through escrow, pursuant to the terms and conditions of the escrow instructions, and in accordance with the following:

1. City shall provide Developer with an ALTA extended coverage owner's policy of title insurance, insuring that Developer owns fee simple title to Parcels A and B, and a long term leasehold interest in Parcel C, subject only to permitted exceptions.

2. City shall pay the cost for the title insurance and fifty percent (50%) of the escrow fees. City shall also pay any documentary transfer taxes.

3. City's right, title and interest shall be conveyed to Developer by deeds and/or a lease in a form and content consistent with the terms of the Agreement.

Section 4.03: Post-Transfer Commitments

A. City shall promptly review, process and approve all building permit applications submitted by Developer in conjunction with implementation of the Project. City shall promptly conduct on-site inspections when requested by Developer or its representatives during the course of construction of any improvement on the Development Site. City shall promptly issue an appropriate Certificate of Occupancy when construction of improvements has been completed in accordance with the provisions of this Agreement and all applicable ordinances, policies and plans.

B. Developer shall have a vested right to implement the Project upon Developer's acceptance of title to the Development Site and subject to Developer's compliance with the construction schedule. City shall not be permitted to apply future General Regulations to the Project without Developer's express written consent. Except as expressly provided in this Agreement, no initiative, measure, moratorium, referendum, ordinance, statute, regulation, policy or other provision of law which in any way interferes with, impedes or restricts the development or use of the Development Site as permitted by this Agreement shall be applied to the Development Site.

V.

DEVELOPER COMMITMENTS

Section 5.01: Pre-Transfer Commitments

A. Developer shall use its best efforts to promptly file

for, and diligently pursue to approval, all required City permits and non-City permits. Developer shall pay its pro-rata share of the cost associated with preparation of documents, reports and studies as specified in Exhibit D. In the event the actual cost of preparing reports, documents and studies for the permits or tasks exceeds the costs identified in Exhibit D, Developer shall pay fifty percent (50%) of the additional and unanticipated cost. Developer shall cooperate with City and its consultants relative to bids, cost estimates and scopes of work prepared in conjunction with applications for City permits and non-City permits.

B. Developer shall cooperate with City in negotiations with entities who own utility facilities above and beneath the surface of the Development Site. Developer shall comply with all reasonable requests of those entities whose facilities must be relocated prior to construction, including the provision of financial security to guarantee the performance of all tasks associated with relocation of the facility and indemnification of the entity during the course of relocation.

C. Developer shall prepare at its sole cost and expense, all conceptual plans and designs describing proposed site development for submission to City and all other public or private entities whose permission is required to implement the Project. Developer shall cooperate in the preparation of any environmental document and pay the cost of preparing that portion of any environmental

document directly related to the development of the Automobile Dealership.

D. Within 90 days after the date of this Agreement, Developer shall perform soils, geologic, engineering and other tests necessary to determine if the soil, geologic and other conditions of the Development Site are suitable for the construction of the Project. The test results shall be submitted to the City within five (5) days after receipt by Developer. The Development Site shall be considered suitable for construction of all necessary improvements unless City or Developer notifies the other, in writing and within thirty (30) days after receipt of the test results, that the Development Site is not physically suited to implementation of the Project.

E. Developer shall diligently seek commitments for financing the cost of the Project. Developer shall have sole and absolute discretion with regard to the amount, terms, and source of financing. Developer shall advise City on a regular basis of its progress in securing requisite financing.

#### Section 5.02: Commitment to Accept Property

Developer shall accept conveyance of City's right, title and interest in Parcels A and B, and accept the leasehold interest in Parcel C, when the following conditions have been satisfied:

A. City has acquired fee simple title to Parcels A and B, and leasehold interest for 50 years in Parcel C (or fee interest if



and when appropriate) subject only to permitted exceptions and provided that Developer is able to acquire title insurance for the Development Site, and subject also to the restrictions contained in the Dedication Agreement and Declaration.

B. All Discretionary Project Approvals have been granted, subject only to conditions and requirements approved by Developer and the appeal period with respect to each permit has expired and no appeal has been filed.

C. Soils, engineering and related reports have been approved by City and Developer or City and Developer have failed to object to the reports within the period specified in this Agreement.

D. City has complied with all of its pre-transfer obligations and City's representations and warranties remain true and correct as of the date of conveyance.

E. Developer has obtained financing for the Project.

#### Section 5.03: Post-Transfer Commitments

A. Developer shall be responsible for the entire cost of designing and constructing all on-site and off-site improvements normally associated with an Automobile Dealership including water lines, sewer lines, electrical lines, gas lines, telephone lines, internal access roads, showrooms, repair facilities, storage facilities, loading and unloading facilities and parking facilities.

B. Developer shall commence and complete construction of the Project in compliance with this Agreement and shall commence

operation as an Automobile Dealership within a reasonable time after City issues a Certificate of Occupancy. Except as otherwise provided herein, Developer shall continue to use the Development Site as a Mercedes Benz Automobile Dealership for the term of this Agreement subject to force majeure.

C. Developer shall pay an annual assessment to City of \$80,000 per year for five (5) years. Developer's assessments will be used by City, for the most part, to reimburse City for the cost of constructing the extension of Bayview Way along the frontage of the Property. Developer's first annual assessment shall be due and payable 180 days subsequent to the date on which the Developer commences doing business at the Development Site and the four (4) subsequent assessments shall be due in twelve (12) month intervals from the date of the first payment.

D. Developer shall pay Fair Share Fees concurrently with the issuance of the first grading or building permit by City. City shall calculate the Fair Share Fees within fifteen (15) days after Developer submits complete plans for Plan Check. The Fair Share Fees shall be based upon the number of projected average daily trips based upon the floor area depicted on the plans and the trip generation rate for an Automobile Dealership. Developer shall also pay impact fees - such as San Joaquin Hills Transportation Corridor fees and any school impact fee - that are collected by, but do not directly benefit the City. Developer shall not be required to pay any building or development impact fee, or make any circulation system improvement other than the annual assessment described in

Subsection 5.03(c), and the fees specified in this Section.

## VI.

### DEVELOPMENT OF THE SITE

#### Section 6.01:

The Project shall be developed in compliance with the Conceptual Site Plan (Exhibit E), which has been approved by City, the scope of work approved by City, the Dedication Agreement and Declaration, all subject to modifications submitted by Developer and approved, in writing, by City and TIC. City's written approval of any modification shall not be unreasonably withheld.

#### Section 6.02: Construction Schedule

A. Developer shall, within 60 days after the Development Site is conveyed to the Developer, submit applications for all permits necessary to construct the Project. Developer shall commence construction within 30 days after issuance of required building or grading permits, subject to force majeure, and thereafter diligently prosecute to completion the construction of the Project. Developer shall strictly adhere to the construction schedule subject to delay and extension due to force majeure or with written approval by City which shall not be unreasonably withheld. Developer shall furnish City with periodic status reports on the progress of construction when requested by the City but no more frequently than once a calendar month. City shall act

upon all applications submitted by Developer with respect to the Development Site within 30 days of submission.

Section 6.03: Rights of Access

For the purposes of assuring compliance with this Agreement and conducting required inspections of all construction in progress, City shall have the right of access to the site without charge or fees during normal construction hours.

VII.

SPECIAL PROVISIONS

Section 7.01: Effective Date

This Agreement and the obligations of the parties shall be effective as of the date of execution, however, the vested rights of Developer shall become effective upon the conveyance of the Development Site by City to Developer.

Section 7.02: Term of the Agreement

The term of this Agreement shall begin on the effective date and continue for twenty (20) years unless otherwise terminated or modified.

Section 7.03: Assignment

A. Except as otherwise provided in this Agreement, Developers shall not sell, transfer or assign all or a portion of

Developer's interest in the Development Site, or improvements, without the express written consent of City and City shall not unreasonably withhold its consent. Developer shall not sell all of, or a controlling interest in, Developer's Mercedes Benz dealership unless such sale is first approved by Mercedes Benz. In the event City consents to any sale of the Development Site from Developer to a successor within twenty (20) years from the date on which Developer commences operation as an Automobile Dealership on the Development Site, City and Developer shall each receive fifty percent (50%) of the net profit on the sale. Net profit on the sale shall be defined to mean the sale price less the following costs by Jones:

1. Site development cost including the cost of constructing all on-site and off-site improvements, all costs incurred in conjunction with grading of the Development Site;
2. Costs incurred in obtaining entitlements;
3. Costs associated with the acquisition of Parcel B;
4. Development and impact fees, including fair share fees, Transportation Corridor fees and school district impact fees;
5. The amount of the annual assessment paid by the Developer pursuant to Section 5.03(c);
6. Costs incurred relative to the transfer of the Development Site.
7. The cost of constructing all subsequent improvements or additions to the Development Site.

B. The restrictions on transfer and the division of net

profit in the event of a transfer shall not apply to any of the following:

1. Any transfer of all or a portion of the Developer's interest in the Development Site or improvements to any member of the family of Fletcher Jones, Jr. whether by sale, inheritance, gift or otherwise;

2. Any transfer of all or a portion of the Development Site or any improvement to any firm, corporation, partnership, trust or other entity at least fifty-one percent (51%) of which is owned by Fletcher Jones, Jr., or the parties identified in Section 7.03 (B) (1).

C. In no event shall the City be obligated to approve any assignment which could result in use of the Development Site for purposes other than those permitted by this Agreement.

#### Section 7.04: Annual Review

Pursuant to the provisions of State law and the Newport Beach Development Agreement Ordinance, City may review Developer's good faith substantial compliance with this Agreement from time to time, but not more frequently than every twelve (12) months during the term. The review shall be conducted at a public hearing noticed in accordance with the provisions of the Development Agreement Ordinance. The review may include a detailed report of compliance of various conditions and mitigation measures. Developer shall be deemed to be in compliance with this Agreement unless the Newport Beach City Council determines, based upon

substantial evidence presented at a public hearing, that Developer has not complied with material provisions of this Agreement applicable to the Project as of the date of the review. City's failure to conduct periodic reviews of this Agreement shall not constitute, or be asserted by either Party as a breach of this Agreement by the other. Developer shall have the right to seek judicial review of any adverse decision of the City Council.

Section 7.05: Estoppel Certificate

Either Party may, at any time, deliver written notice to the other requesting an estoppel certificate stating:

A. The Agreement is in full force and effect and is a binding obligation of the Parties.

B. The Agreement has not been amended or modified either orally or in writing or, if so amended, identifying the amendments.

C. No default of performance of the requesting Party's obligations under the Agreement exists or, if a default does exist the nature and amount of any default.

D. The Party receiving a request for an estoppel certificate shall provide a signed certificate to the requesting Party within thirty (30) days after receipt of the request.

Section 7.06: Reversion/Performance

A. Documents conveying title to the Development Site shall provide that the Development Site reverts to the City in the event

Developer fails to operate the Automobile Dealership on the site at any time during the term of this Agreement subject to the following:

1. Developer shall have the right to continue the Automobile Dealership with any other vehicle make or model available in the event Developer has been unable to receive and sell enough Mercedes Benz automobiles to successfully support operation of the Automobile Dealership; and

2. Developer shall have the right to convert the Development Site to a use other than the Automobile Dealership provided the use is consistent with the Land Use Element of the Newport Beach General Plan, the Land Use Plan of the local coastal program of the City of Newport Beach, and all applicable zoning ordinances, resolutions, policies and plans and subject further to compliance with the terms and conditions of the Dedication Agreement and Declaration.

Section 7.07:            Minimum Gross Sales

A. City assumes, and Developer concurs, that Developer will generate a minimum average annual gross sales of \$80,000,000.00 during the first five (5) years of operation. Developer shall use its best efforts to generate the estimated annual gross revenue contemplated by the parties. In the event Developer fails to generate average annual gross revenue of \$80,000,000.00 during the first five (5) years of the operation of the Automobile Dealership, Developer shall reimburse City some of the costs actually incurred



by City in performing the tasks identified in Exhibit D, pursuant to the following formula.

$$\frac{\text{Difference between estimated gross average } (\$80,000.000.00) \text{ and actual gross average annual revenue}}{\text{Estimated gross average annual revenue } (\$80,000.000.00)} \times$$

Section 7.08: Amendment of Agreement

This Agreement may be amended from time to time by the written mutual consent of the parties or their successors in interest, but only in the manner provided by the Government Code or the Development Agreement Ordinance.

Section 7.09: Use of Development Site prior to Issuance of Certificate of Occupancy.

In the event the Development Site is not completed prior to the expiration of Developer's lease term at 1301 Quail Street and Developer is, for any reason, unable to occupy the Quail Street premises on a month to month basis, Developer may utilize temporary facilities to conduct all business operations of the Automobile Dealership at the Development Site, until the construction on the Project on the Development Site is completed, and a Certificate of Occupancy is obtained.

Section 7.10: City Satisfaction of Conditions

City shall be responsible for satisfying any condition imposed on the Project which requires any present or future payment of fees including any condition imposed pursuant to the provisions of Section 15.40 of the Newport Beach Municipal Code.

## VIII.

### DEFAULTS, REMEDIES AND TERMINATION

#### Section 8.01: Default

The failure by either Party to perform any material term or provision of this Agreement shall constitute a default when the failure of performance is not cured thirty (30) days following written notice of default served by the non-defaulting Party or if such default cannot with the exercise of due diligence be cured within 30 days, when the defaulting Party has not commenced to cure such default within 30 days following written notice of default, or has not diligently proceeded to cure such default. In no event shall any legal action to enforce this Agreement be instituted against the Party in default until at least thirty (30) days after notice of default is given.

#### Section 8.02: Waiver

Any failure or delay by either Party in asserting any of its rights or remedies as to any breach or default shall not operate as a waiver of the non-defaulting Party's remedies.

#### Section 8.03: Specific Performance

Except as otherwise provided in this Agreement the parties agree that the only remedies for a material breach of this Agreement prior to the conveyance of the Development Site from City to Developer shall be an action for specific performance or

termination of the Agreement. The parties agree and acknowledge that it would be difficult, if not impossible, to ascertain the amount of damages sustained by the non-breaching Party in the event of a breach by either Party prior to the City's obligation to convey, and Developer's obligation to accept, the Development Site. The parties also acknowledge and agree that, in such event, the non-defaulting Party would not have an adequate remedy at law.

Section 8.04: Termination by Developer

Developer shall have the right to terminate this Agreement prior to conveyance of the property in the event that:

A. Developer fails to obtain all Discretionary Project Approvals on or before December 31, 1995 subject only to conditions and requirements approved by Developer unless, prior to termination, Developer obtains all discretionary Project approvals; or

B. City fails to acquire sufficient legal interests (or a binding commitment by Cal Trans with respect to Parcel B) to Parcels A, B and C to permit Developer to implement the Project prior to December 31, 1995 unless prior to notice of termination, City acquires the requisite interest and tenders title to Developer; or

C. Developer or City disapproves the engineering soil or geologic conditions of the Development Site as provided in Section 5.01(D); or

D. Developer fails to obtain financing for the cost of the

Project as provided in 5.01(E); or

E. Developer gives written notice of termination to City in Developer's sole and absolute discretion.

Termination shall be effective on thirty (30) days written notice.

Section 8.05: Termination by City

City may terminate this Agreement in the event that:

A. Developer fails to obtain all discretionary Project approvals on or before December 31, 1995 unless Developer has obtained all discretionary Project approvals prior to the effective date of termination;

B. Developer fails to construct the required improvements in accordance with the construction schedule subject to the provisions of this Agreement relating to force majeure;

C. Developer assigns this Agreement in contravention of the provisions of Section 7.03; or

D. Developer fails to accept an appropriate interest in Parcels A, B and C when obligated to do so pursuant to the provisions of Section 5.02.

Section 8.06: Reversion to City

City shall have the additional right, at its option, to acquire title to the Development Site and take possession of the Development Site with all improvements thereon, and subject to any

liens, or encumbrances thereon if, after the construction commencement date and prior to the recordation of the Certificate of Completion, Developer, unless due to force majeure:

A. Fails to commence construction of the improvements as required by this Agreement for a period of three (3) consecutive months after written notice from the City; or

B. Without good cause, abandons or substantially suspends construction of the improvements for a period of three (3) consecutive months after written notice from City to commence construction; or

C. Developer fails to operate a Mercedes Benz Automobile Dealership on the Development Site at any time during the term of this Agreement provided, however, City may not terminate this Agreement if Developer has been unable to receive and sell enough automobiles to successfully support operation of the dealership in which event Developer shall have the right to continue the Automobile Dealership with any other vehicle line available and provided, further, Developer shall have the right to convert the property to other uses subject to the terms and conditions of this Agreement, the Dedication Agreement, and the Declaration.

#### ARTICLE IX.

##### GENERAL PROVISIONS

Section 9.1: Notices, Demands and Communications Between the

### Parties

All notices, consents and approvals required or permitted under this Agreement must be in writing and shall be sent by registered or certified mail, postage prepaid, return receipt requested, to the City or the Developer at the addresses set forth below or hand delivered at such addresses.

City: City of Newport Beach  
3300 Newport Boulevard  
P.O. Box 1768  
Newport Beach, CA 92659-1768  
Attn: City Manager

Developer: Fletcher Jones Motorcars  
1301 Quail Street  
Newport Beach, CA 92660  
Attn: Fletcher Jones, Jr.

Fletcher Jones Management Group  
175 E. Reno, C-6  
Las Vegas, NV 89109  
Attn: Fletcher Jones, Jr.

Such written notices, consents and approvals may be sent in the same manner to such other addresses as either Party may from time to time designate by mail. Notices, consents and approvals shall not be effective until five (5) days after mailing.

### Section 9.2: Conflicts of Interest

No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects their personal interests or the interests of any corporation, partnership or association in

which they are directly or indirectly interested.

Section 9.3: Nonliability of City, Officials, Employees, Officers and Directors

No member, official or employee of the City shall be personally liable to the Developer, in the event of any default or breach by the City, for any amount which may become due to the Developer or on any obligations under the terms of this Agreement.

Section 9.4: Inspection of Books and Records

The City has the right, upon not less than seventy-two (72) hours' notice and at reasonable times, to inspect the books and records of the Developer pertaining to the Development Site and the Project as pertinent to the purposes of this Agreement. The Developer also has the right, upon not less than seventy-two (72) hours' notice and at reasonable times, to inspect the books and records of the City pertaining to the Development Site and the Project pertinent to the purposes of this Agreement.

Section 9.5: Execution in Counterparts

This Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

Section 9.6: Effect of Prior Negotiations and Agreements

This Agreement constitutes the sole and exclusive agreement

between the parties, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter of this Agreement.

Section 9.7: Waivers and Amendments

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City and the Developer. All amendments to this Agreement must be in writing and signed by the appropriate authorities of the City and the Developer.

Section 9.8: Severability

In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

Section 9.9: Governing Law

This Agreement shall be construed and governed in accordance with the laws of the State of California.

Section 9.10: Time of the Essence

City and Developer expressly agree and acknowledge that time is of the essence in the performance of this Agreement.



Section 9.11: Validity

This Agreement shall be of no force or effect and shall not bind the City to any of its terms unless and until it has been approved by the City Council of the City of Newport Beach.

IT WITNESS WHEREOF, this DISPOSITION AND DEVELOPMENT AGREEMENT has been executed by the parties hereto by their respective officers all as of the date hereinabove written.

DEVELOPER

FLETCHER JONES MOTOR CARS, INC.

  
FLETCHER JONES, JR., PRESIDENT

CITY OF NEWPORT BEACH

  
Mayor John Hedges

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

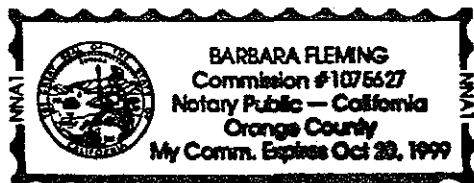
State of CALIFORNIA

County of ORANGE

On JANUARY 4, 1996 before me, BARBARA FLEMING, NOTARY PUBLIC  
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared FLETCHER JONES, JR.  
NAME(S) OF SIGNER(S)

☒ personally known to me - **OR** - ☐ ~~proved to me on the basis of satisfactory evidence~~  
to be the person(s) whose name(s) is/are  
subscribed to the within instrument and ac-  
knowledged to me that he/~~she/they~~  
the same in his/~~her/their~~ authorized  
capacity(~~ies~~), and that by his/~~her/their~~  
signature(s) on the instrument the person(s),  
or the entity upon behalf of which the  
person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Barbara Fleming  
SIGNATURE OF NOTARY

## OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

### CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL  
☒ CORPORATE OFFICER  
PRESIDENT  
TITLE(S)
- ☐ PARTNER(S) ☐ LIMITED  
☐ GENERAL
- ☐ ATTORNEY-IN-FACT  
☐ TRUSTEE(S)  
☐ GUARDIAN/CONSERVATOR  
☐ OTHER: \_\_\_\_\_

### SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)  
FLETCHER JONES MOTOR CARS, INC.

### DESCRIPTION OF ATTACHED DOCUMENT

DEVELOPMENT AGREEMENT BETWEEN THE  
CITY OF NEWPORT AND FLETCHER JONES MOTOR  
CARS, INC.  
42 INCLUDING ACKNOWLEDGEMENT  
NUMBER OF PAGES

1/4/96  
DATE OF DOCUMENT

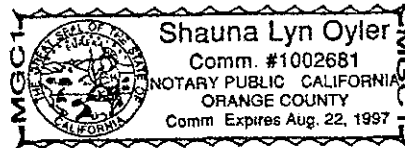
MAYOR JOHN HEDGES, CITY OF NEWPORT BEACH  
SIGNER(S) OTHER THAN NAMED ABOVE

)  
STATE OF CALIFORNIA )ss.  
COUNTY OF ORANGE )

On Jan. 4 1996, before me, Shauna Lyn Oyler personally appeared  
John Hedges personally known to me (or proved  
to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is are  
subscribed to the within instrument and acknowledged to me that he she/they executed  
the same in his her/their authorized capacity(ies), and that by his her/their signature(s) on  
the instrument the person(s) or the entity upon behalf of which the person(s) acted,  
executed the instrument.

WITNESS my hand and official seal.

Shauna Lyn Oyler  
Notary Public in and for said State



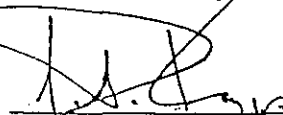
THOSE PORTIONS OF THE IRVINE'S SUBDIVISION, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP THEREOF RECORDED IN BOOK 1, PAGE 88, OF MISCELLANEOUS RECORD MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

PARCEL A (THE IRVINE COMPANY)

COMMENCING AT THE SOUTHERLY CORNER OF THE NORTHWESTERLY ONE-HALF OF THE SOUTHEASTERLY ONE-HALF OF BLOCK 50 OF SAID IRVINE'S SUBDIVISION, AS SAID CORNER IS SHOWN ON A MAP ATTACHED TO A DEED TO SAID COUNTY RECORDED IN BOOK 1055, PAGE 115, OF OFFICIAL RECORDS OF SAID COUNTY. THE BEARING OF THE SOUTHWESTERLY LINE OF SAID BLOCK 50 IS NORTH 49°21'51" WEST. SAID SOUTHERLY CORNER IS ALSO THE CENTERLINE INTERSECTION OF JAMBOREE ROAD, 132 FEET WIDE, AS DESCRIBED IN A DEED TO THE CITY OF NEWPORT BEACH, RECORDED IN BOOK 6135, PAGE 155, OF SAID OFFICIAL RECORDS, AND SAID SOUTHWESTERLY LINE; THENCE SOUTH 40°38'09" WEST ALONG SAID CENTERLINE 112.80 FEET TO THE BEGINNING OF A CURVE IN SAID CENTERLINE, CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 1600.00 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE 142.99 FEET THROUGH A CENTRAL ANGLE OF 5°07'14"; THENCE DEPARTING FROM SAID CENTERLINE SOUTH 54°29'05" EAST, RADIALLY TO SAID CURVE, 81.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, THE RADIUS POINT OF WHICH BEARS SOUTH 54°29'05" EAST 1519.00 FEET FROM SAID BEGINNING; THENCE NORTHEASTERLY ALONG SAID CURVE 135.75 FEET THROUGH A CENTRAL ANGLE OF 5°07'14"; THENCE NORTH 40°38'09" EAST 20.68 FEET TO THE BEGINNING OF A CURVE, CONCAVE SOUTHERLY AND HAVING A RADIUS OF 37.00 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE 42.36 FEET THROUGH A CENTRAL ANGLE OF 65°35'21" TO THE BEGINNING OF A NON-TANGENT CURVE, THE RADIUS POINT OF WHICH BEARS SOUTH 45°59'17" WEST 1272.00 FEET FROM SAID BEGINNING; THENCE SOUTHEASTERLY ALONG SAID CURVE 172.46 FEET THROUGH A CENTRAL ANGLE OF 7°46'06" TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING SOUTHEASTERLY ALONG SAID CURVE 127.46 FEET THROUGH A CENTRAL ANGLE OF 5°44'29" TO A POINT TO BE KNOWN AS "POINT A"; THENCE CONTINUING SOUTHEASTERLY ALONG SAID CURVE 315.58 FEET THROUGH A CENTRAL ANGLE OF 14°12'54" TO THE BEGINNING OF A COMPOUND CURVE, THE RADIUS POINT OF WHICH BEARS SOUTH 73°42'46" WEST ALONG 1072.00 FEET FROM SAID BEGINNING; THENCE SOUTHEASTERLY ALONG SAID CURVE 165.72 FEET THROUGH A CENTRAL ANGLE OF 8°51'26"; THENCE SOUTH 7°25'48" EAST 137.06 FEET TO THE BEGINNING OF A CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 27.00 FEET; THENCE SOUTHERLY ALONG SAID CURVE 14.24 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, THE RADIUS POINT OF WHICH BEARS NORTH 5°37'44" EAST 1748.06 FEET FROM SAID BEGINNING, SAID POINT TO BE KNOWN AS "POINT B"; THENCE NORTHWESTERLY ALONG SAID CURVE 322.81 FEET THROUGH A CENTRAL ANGLE OF 10°34'50" TO THE BEGINNING OF A COMPOUND CURVE, THE RADIUS POINT OF WHICH BEARS NORTH 16°12'34" EAST 1092.17 FEET FROM

SAID BEGINNING; THENCE NORTHWESTERLY ALONG SAID CURVE 118.99 FEET THROUGH A CENTRAL ANGLE OF  $6^{\circ}14'32''$ ; THENCE NORTH  $67^{\circ}32'54''$  WEST 126.12 FEET; THENCE NORTH  $68^{\circ}28'38''$  WEST 54.25 FEET TO A POINT TO BE KNOWN AS "POINT C"; THENCE NORTH  $13^{\circ}03'10''$  EAST 15.42 FEET; THENCE NORTH  $17^{\circ}37'21''$  EAST 83.83 FEET; THENCE NORTH  $25^{\circ}30'48''$  EAST 71.20 FEET; THENCE NORTH  $34^{\circ}48'54''$  EAST 67.09 FEET; THENCE NORTH  $36^{\circ}35'37''$  EAST 293.40 FEET; THENCE NORTH  $41^{\circ}18'40''$  EAST 118.28 FEET TO THE TRUE POINT OF BEGINNING.

ALL AS MORE PARTICULARLY SHOWN ON THE SKETCH ATTACHED HERETO AND BY REFERENCE MADE A PART HEREOF.

 *September 21, 1995*  
J. P. KAPP, P. E. RCE # 22015  
EXPIRES: SEPTEMBER 30, 1997

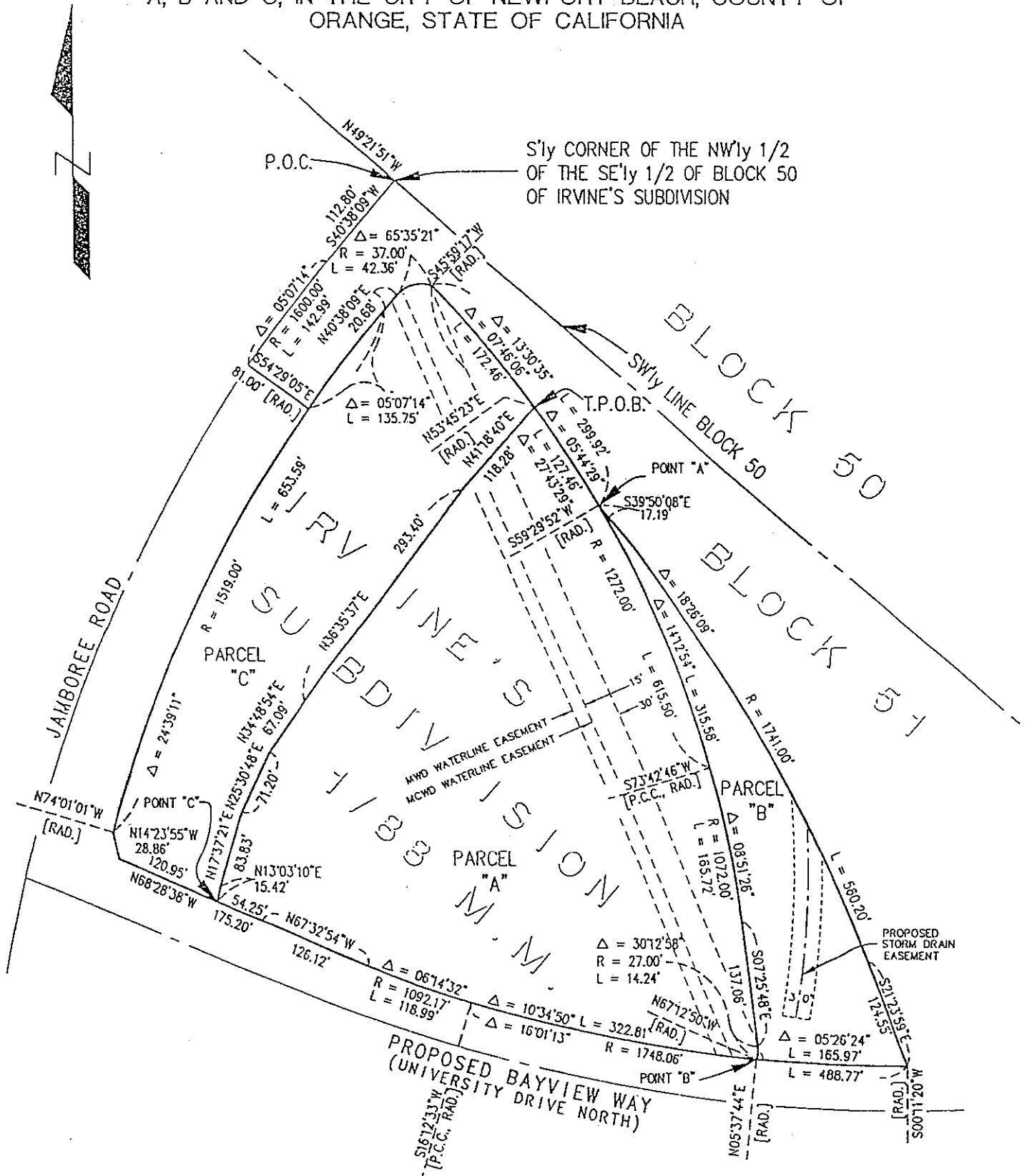


SCALE: 1" = 150'

# SKETCH

SHEET 1 OF 1

TO ACCOMPANY LEGAL DESCRIPTION OF PARCELS  
A, B AND C, IN THE CITY OF NEWPORT BEACH, COUNTY OF  
ORANGE, STATE OF CALIFORNIA



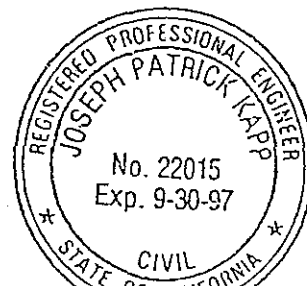
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PARCEL B (CALTRANS)

BEGINNING AT THE ABOVE DESCRIBED "POINT A"; THENCE SOUTH 39°50'08" EAST 17.19 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 1741.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE 560.20 FEET THROUGH A CENTRAL ANGLE OF 18°26'09"; THENCE SOUTH 21°23'59" EAST 124.55 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, THE RADIUS POINT OF WHICH BEARS SOUTH 00°11'20" WEST 1748.06 FEET FROM SAID BEGINNING; THENCE WESTERLY ALONG SAID CURVE 165.97 FEET THROUGH A CENTRAL ANGLE OF 5°26'24" TO THE ABOVE DESCRIBED "POINT B"; THENCE ALONG THE EASTERLY LINE OF THE ABOVE DESCRIBED PARCEL A TO "POINT A" AND THE POINT OF BEGINNING.

ALL AS MORE PARTICULARLY SHOWN ON THE SKETCH ATTACHED HERETO AND BY REFERENCE MADE A PART HEREOF.

  
J. P. KAPP, P. E. RCE # 22015  
EXPIRES: SEPTEMBER 30, 1997

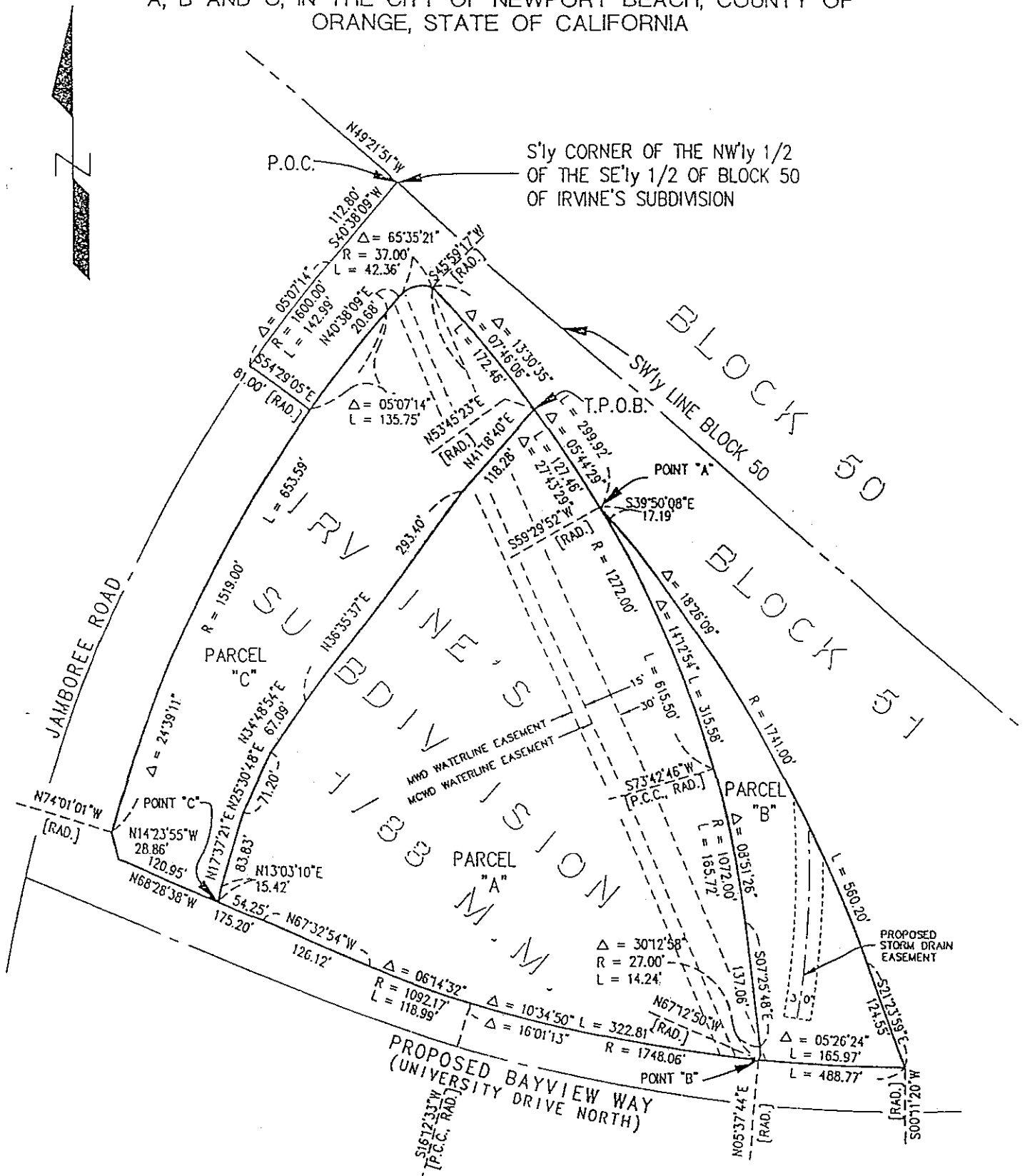


SCALE: 1" = 150'

# SKETCH

SHEET 1 OF 1

TO ACCOMPANY LEGAL DESCRIPTION OF PARCELS  
A, B AND C, IN THE CITY OF NEWPORT BEACH, COUNTY OF  
ORANGE, STATE OF CALIFORNIA






THOSE PORTIONS OF THE IRVINE'S SUBDIVISION, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP THEREOF RECORDED IN BOOK 1, PAGE 88, OF MISCELLANEOUS RECORD MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

PARCEL C (TRANSPORTATION CORRIDOR AGENCY)

BEGINNING AT THE ABOVE DESCRIBED "POINT C"; THENCE NORTH  $68^{\circ}28'38''$  WEST 120.95 FEET; THENCE NORTH  $14^{\circ}23'55''$  WEST 28.86 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, THE RADIUS POINT OF WHICH BEARS SOUTH  $74^{\circ}01'01''$  EAST 1519.00 FEET FROM SAID BEGINNING; THENCE NORTHEASTERLY ALONG SAID CURVE 653.59 FEET THROUGH A CENTRAL ANGLE OF  $24^{\circ}39'11''$ ; THENCE NORTH  $40^{\circ}38'09''$  EAST 20.68 FEET TO THE BEGINNING OF A CURVE, CONCAVE SOUTHERLY AND HAVING A RADIUS OF 37.00 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE 42.36 FEET THROUGH A CENTRAL ANGLE OF  $65^{\circ}35'21''$  TO THE BEGINNING OF A NON-TANGENT CURVE, THE RADIUS POINT OF WHICH BEARS SOUTH  $45^{\circ}59'17''$  WEST 1272.00 FEET FROM SAID BEGINNING; THENCE SOUTHEASTERLY ALONG SAID CURVE 172.46 FEET THROUGH A CENTRAL ANGLE OF  $7^{\circ}46'06''$  TO THE TRUE POINT OF BEGINNING OF THE ABOVE DESCRIBED PARCEL A; THENCE SOUTHWESTERLY ALONG THE NORTHWESTERLY LINE OF SAID ABOVE DESCRIBED PARCEL A TO "POINT C" AND THE POINT OF BEGINNING.

ALL AS MORE PARTICULARLY SHOWN ON THE SKETCH ATTACHED HERETO AND BY REFERENCE MADE A PART HEREOF.

 September 21, 1995  
J. P. KAPP, P. E. RCE # 22015  
EXPIRES: SEPTEMBER 30, 1997



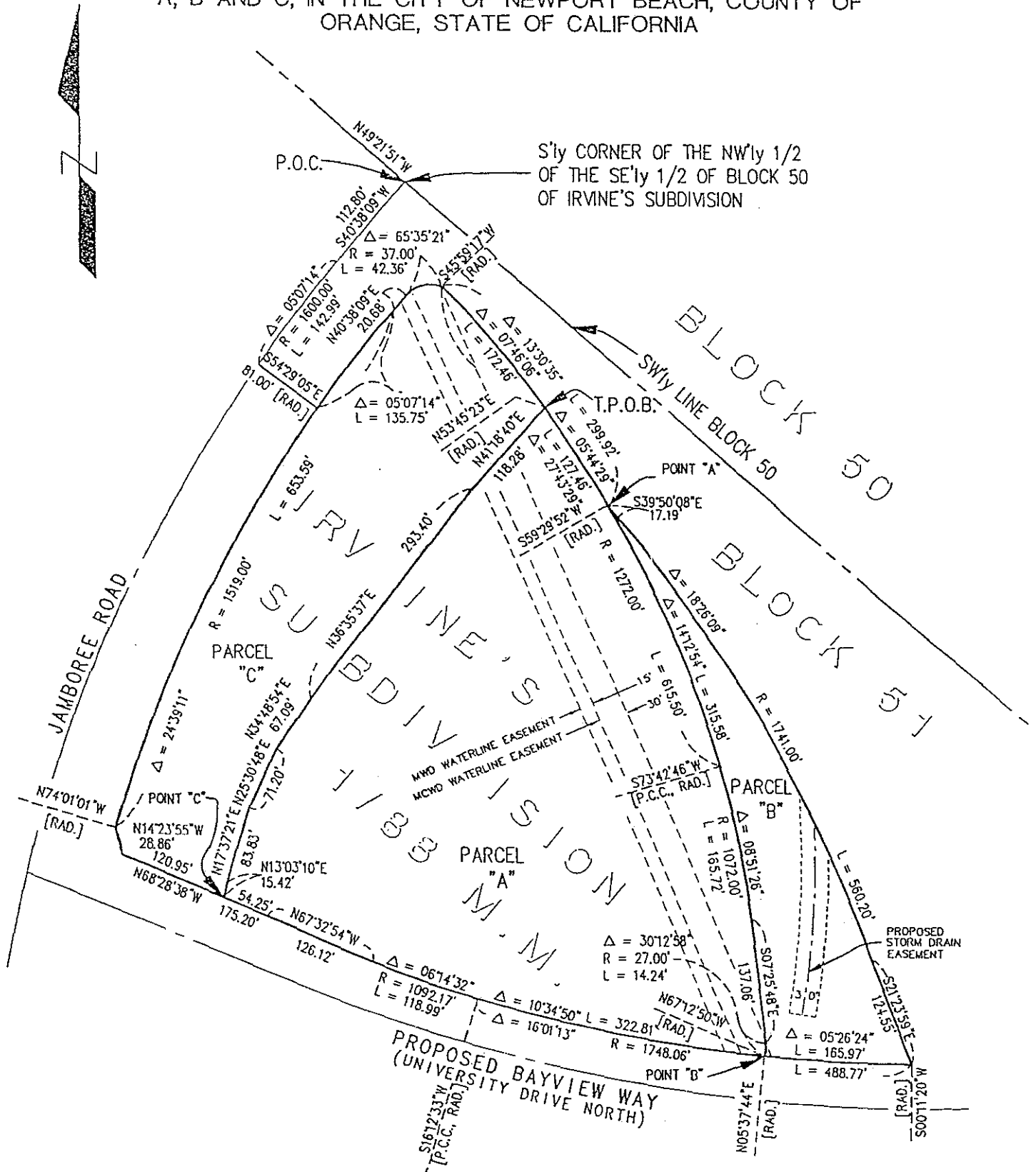
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SCALE: 1" = 150'

# SKETCH

SHEET 1 OF 1

TO ACCOMPANY LEGAL DESCRIPTION OF PARCELS  
A, B AND C, IN THE CITY OF NEWPORT BEACH, COUNTY OF  
ORANGE, STATE OF CALIFORNIA



**EXHIBIT D**  
**COST SHARING**  
**FLETCHER JONES/CITY OF NEWPORT BEACH**

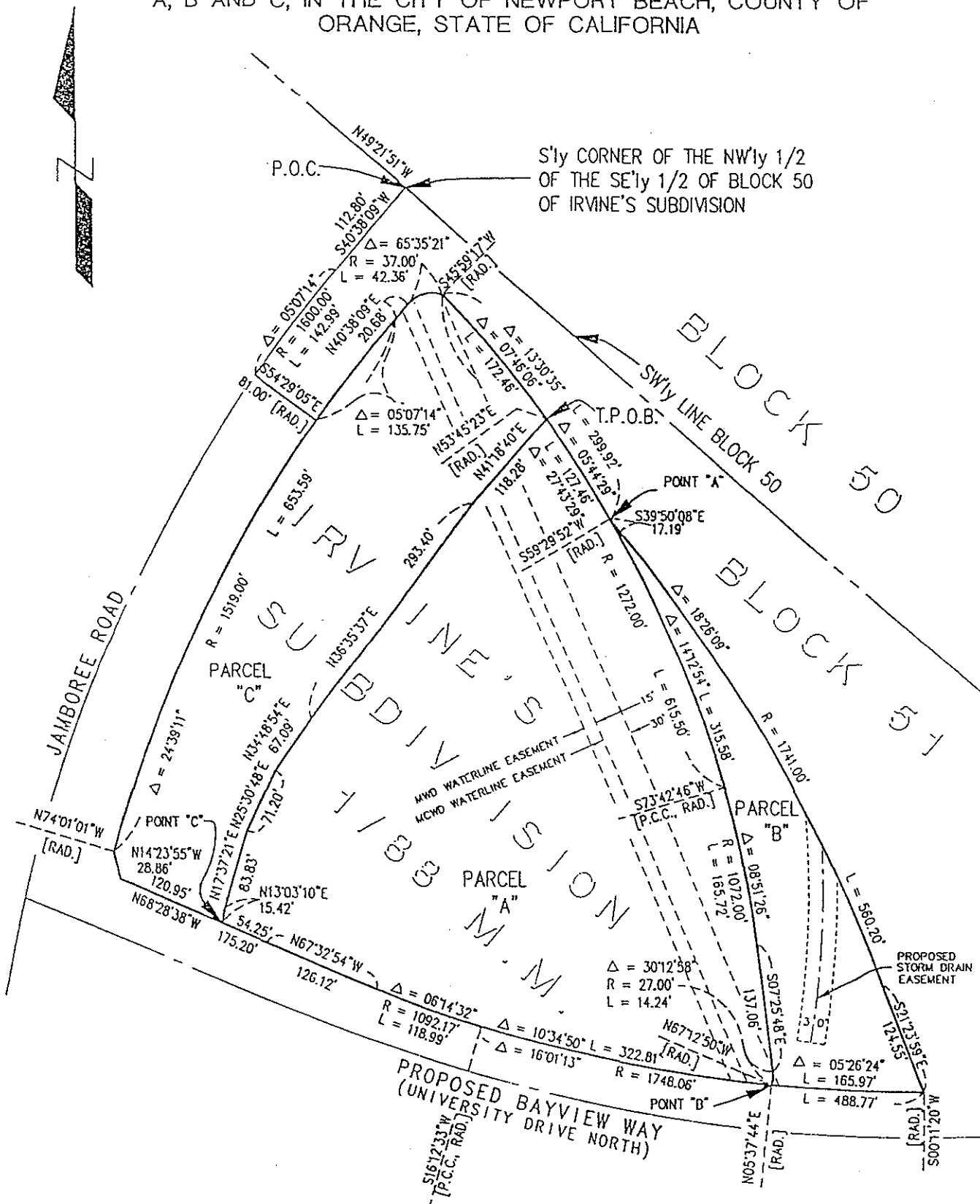
<u>TASK DESCRIPTION</u>	<u>SITE SHARE (FLETCHER JONES)</u>	<u>BAYVIEW WAY SHARE (CNB)</u>	<u>TOTAL</u>
Composite Site Plan Graphics	\$1,500.00	\$1,500.00	\$3,000.00
EIR for Bayview Way (Jamboree to MacArthur) and Auto Dealership Site	\$47,000.00	\$47,000.00	\$94,000.00
Typographical Mapping and Boundary Surveying	\$12,000.00	\$12,000.00	\$24,000.00
Engineering for Street and Site Grading; Street Improvements & Utility Infrastructure	\$35,000.00	\$35,000.00	\$70,000.00
Geotechnical Field Investigation and Written Report	\$6,750.00	\$6,750.00	\$13,500.00
Level 1 Environmental Analysis for Hazardous Materials	\$1,750.00	\$1,750.00	\$3,500.00
Permit Processing with Federal & State Agencies	\$8,000.00	\$8,000.00	\$16,000.00
Project Management	\$30,000.00	\$30,000.00	\$60,000.00
Excavation for M.W.D. and M.C.W.D. Mains	\$1,810.00	\$1,810.00	\$3,620.00
Percolation Feasibility Study	\$6,492.00	0	\$6,492.00
Reproduction	\$500.00	\$500.00	\$1,000.00
<b>SUBTOTALS</b>	<b>\$150,802.00</b>	<b>\$144,310.00</b>	<b>\$295,112.00</b>
Real Estate Appraisal (Caltrans Appraisal)	\$21,000.00	0	\$21,000.00
Title Report	\$2,000.00	0	\$2,000.00
<b>TOTAL</b>	<b>\$173,802.00</b>	<b>\$144,310.00</b>	<b>\$318,112.00</b>

SCALE: 1" = 150'

# SKETCH

SHEET 1 OF 1

TO ACCOMPANY LEGAL DESCRIPTION OF PARCELS  
A, B AND C, IN THE CITY OF NEWPORT BEACH, COUNTY OF  
ORANGE, STATE OF CALIFORNIA



I certify under the penalty of perjury that the notary seal on the document to which this statement is attached reads as follows:

Name of Notary: BARBARA FLEMING

Date Commission Expires: OCTOBER 20, 1999

Commission Number: 1075627

Vendor Number: NNA1

County where bond is filed: ORANGE

Place of Execution: IRVINE, CA

Date: MAY 28, 1996

By: 

Jeff Lamm  
CHICAGO TITLE COMPANY